



Federal Communications Commission
Washington, D.C. 20554

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DA 08-1741

In Reply Refer to:

1800B3-TEC

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Re: **Hill & Glover Broadcasting, LLC**
NEW(AM), Bend, Oregon
Facility ID No. 160230
File No. BMP-20070419ABG
Application for Modified Construction Permit

Dear Mr. DiScipio and Ms. Follansbee:

We have before us an application (the "Application") to modify the authorized facilities of a new AM station in Bend, Oregon, filed by Hill & Glover Broadcasting, LLC ("H & G") on April 19, 2007.¹ We also have Informal Objections to the Application by Ms. Julia A. Follansbee ("Follansbee"), filed on October 9, 2007 (the "October 2007 Letter"), and April 22, 2008 (the "April 2008 Letter"). Follansbee argues that the towers proposed in the Application would pose significant safety hazards to pilots using Juniper Airpark ("Juniper"), a nearby, private-use airport.² For the reasons stated below, we deny the Informal Objections and grant the Application.

Background. On April 19, 2007, H & G submitted the Application proposing to construct three 199-foot³ towers for its authorized new AM station in Bend, Oregon.⁴ We dismissed the Application on September 5, 2007, because the towers would cause nighttime interference in violation of Section 73.182 of

¹ FCC File No. BMP-20070419ABG.

² See April 2008 Letter at 2. Unlike a "public airport," a private-use airport is an airport that is not "open to the general public." See 14 C.F.R. § 77.2.

³ *Id.*

⁴ FCC File No. BMP-20070419ABG.

the Commission's Rules (the "Rules").⁵ H & G amended the Application to comply with Section 73.182 and submitted a Petition for Reconsideration and Request for Reinstatement of Application *Nunc Pro Tunc* (the "Petition").⁶ We granted the Petition and reinstated the Application on April 7, 2008, requiring, however, that H & G respond to the October 2007 Letter.⁷ Subsequent to the Application's reinstatement, Follansbee filed the April 2008 Letter.

In the October 2007 Letter, Follansbee challenges a "Determination of No Hazard to Air Navigation" (the "Determination") obtained by H & G from the Federal Aviation Administration (the "FAA"). The Determination states that H & G's towers "would not have a substantial adverse effect on the safe and efficient use of navigable airspace by aircraft."⁸ Despite this conclusion, however, Follansbee contends that the FAA never gave the "green light" for Deschutes County, Oregon, to approve H & G's plans because the FAA never accounted for Juniper's proximity to the proposed tower site.⁹ Accordingly, Follansbee requests that the Commission stay the grant of the construction permit until Deschutes County determines the air safety of the proposed towers.¹⁰

In the April 2008 Letter, Follansbee acknowledged that Deschutes County granted H & G's land-use application on December 14, 2007. Nevertheless, Follansbee claims that H & G misrepresented the Determination's finding because it did not directly apply to Juniper, and reiterates her challenge to any decision relying on the Determination as resolving air hazard issues with regard to safety concerns posed to Juniper airspace.¹¹

H & G responded to Follansbee's Informal Objections on May 2, 2008.¹² H & G first argues that Follansbee's concern regarding the Determination is "irrelevant" because FAA regulations do not require "No Hazard" determinations for towers less than 200 feet tall.¹³ Secondly, H & G contends that Deschutes County already made a final decision in favor of H & G, making Follansbee's objections moot.¹⁴

⁵ See *Letter to Joseph M. DiScipio*, Reference 1800B3 (MB Sept. 5, 2007); see also 47 C.F.R. § 73.182.

⁶ See Petition for Reconsideration and Request for Reinstatement of Application at 1. We will generally reinstate an application *nunc pro tunc* where the original application was dismissed and where a "minor curative amendment" was filed within thirty days of the dismissal date. See *Statement of Future Policy on Incomplete or Patently Defective AM and FM Construction Permit Applications*, Public Notice, 49 Fed. Reg. 47331, 47332 (Dec. 3, 1984).

⁷ *Letter to Joseph M. DiScipio*, Reference 1800B3 (MB Apr. 7, 2008). Follansbee filed the October 2007 Letter after we initially dismissed the Application. Follansbee apparently never served this objection on H & G. *Id.*

⁸ See *Determination of No Hazard to Air Navigation*, Aeronautical Study No. 2007-ANM-2561-OE (Sept. 5, 2007).

⁹ See October 2007 Letter at 1.

¹⁰ *Id.*

¹¹ See April 2008 Letter at 2.

¹² See Response to Reinstatement Letter and Informal Objections.

¹³ *Id.* at 2.

¹⁴ Follansbee appealed Deschutes County's approval the H & G towers, but under the County's procedures ordinance, the decision is "final" regardless of any pending appeal. See *id.* at 3.

Therefore, according to H & G, we should dismiss Follansbee's Informal Objections and grant the Application.¹⁵

Discussion. Pursuant to Section 309(e) of the Act, informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.¹⁶ We will consider Follansbee's Informal Objections based on this standard of review.

Section 17.4 of the Rules requires the owner of any tower "requir[ing] notice of proposed construction to the [FAA]" to register with the Commission.¹⁷ In cases where notice to the FAA is required, the owner also must submit a valid FAA determination of "No Hazard."¹⁸ Pursuant to Section 17.7(a) of the Rules, FAA notification is required for towers that would be "more than 60.96 meters (200 feet) in height above ground level at its site."¹⁹ FAA notification also is required for any tower that would interrupt specific glide-path slopes extending out from the nearest runway as listed in Section 17.7(b) of the Rules.²⁰ However, the FAA will make a "no hazard" determination only by assessing a proposed tower's impact on runways "available for public use" or "operated by an armed force of the United States."²¹

The record establishes that notice of the proposed tower array was not categorically required.²² Nevertheless, H & G voluntarily gave notice of the proposed towers to the FAA.²³ The FAA subsequently made its Determination on September 5, 2007, finding that the proposed towers posed no hazard to air safety. Thus, although notice to the FAA was not required, we note that H & G has fully complied with the associated Commission registration requirements. To the extent that Follansbee disagrees with the Determination, this is a matter that falls solely within the FAA's jurisdiction. Therefore, we conclude that the Informal Objections fail to establish a *prima facie* case that grant of the Application would be inconsistent with the public interest.

¹⁵ *Id.* at 2.

¹⁶ 47 U.S.C. § 309(e); *See also Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R. 2d 862 (1986) (informal objections, like petitions to deny, must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁷ *See* 47 C.F.R. § 17.4(a).

¹⁸ *Id.* § 17.4(b).

¹⁹ *Id.* § 17.7(a).

²⁰ *See id.* § 17.7(b). Additionally, the FAA also requires notice for any construction that would be in an "instrument approach area," which is inapplicable in this case. *See id.* § 17(c).

²¹ *Id.* § 17.7(d). Section 17.7(d) of the Rules also applies to airports proposed for construction. *Id.*

²² Letter from Nancy B. Kalinowski, Acting Vice President, Systems Operations Services, Federal Aviation Administration, to Sen. Gordon H. Smith (Oct. 15, 2007), attached to the April 2008 Letter ("It is significant to note that in this particular case, [H & G] is not required to file notice with the FAA Notwithstanding the above notice requirements, a proponent is not precluded from seeking FAA review if he/she so desires. . . . [H & G] voluntarily filed notice with the FAA.").

²³ *Id.*

Conclusion. IT IS ORDERED, that Ms. Julia A. Follansbee's Informal Objections ARE HEREBY DENIED. IT IS FURTHER ORDERED, that the Hill & Glover Broadcasting, LLC's Modification Application IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Hill & Glover Broadcasting, LLC